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11 Plaintiff Attorney for the United States

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 **-oOo-**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 vs.

18 OMAR QAZI,

19 Defendant.

Case 2:15-cr-00014-APG-VCF

EMERGENCY MOTION TO CONTINUE
GOVERNMENT'S RESPONSE DEADLINE

20 The United States of America, by and through the undersigned Assistant United States
21 Attorney (AUSA), Alexandra M. Michael, hereby respectfully moves the Court for a continuance of
22 the Government's Response Deadline for Defendant's Motion to Dismiss (ECF # 329). The
23 Government's Response Deadline is currently set for July 6, 2017 (ECF #329). The Government
24 respectfully requests a short continuance, at least one week, in order to have sufficient time to
investigate, research and prepare a substantive response.

25 The Speedy Trial Act, as enumerated in Title 18, United States Code, Section 3161 provides
that the Court may grant a continuance on the basis of finding that such a continuance serves the ends
of justice taking into account the best interest of the public and the defendant in a speedy trial. 18

1 U.S.C. § 3161(7)(A). The factors the Court should consider when determining whether to grant a
2 continuance are denoted in 18 U.S.C. § 3161(7)(B). Those factors include considering whether a
3 denial of a continuance would result in a miscarriage of justice, and if a denial would deny the parties
4 reasonable time to prepare for trial. 18 U.S.C. § 3161(h)(7)(B)(i) and (iv). Here, a denial of a
5 continuance would result in a miscarriage of justice because the Government believes this time is
6 necessary to ensure the Government has a reasonable amount of time to fully respond.

7 If granted, the continuance should be excluded from the speedy trial time computation pursuant
8 to 18 U.S.C. §§ 3161(h)(1)(A), as well as considering the factors under Title 18, United States Code
9 §§ 3161(h)(7)(B)(i) and (iv).

10 The government would also note there are two issues pending before the Ninth Circuit in the
11 case, one submitted by the government and one submitted by the defendant, *see* ECF #282 and ECF
12 #329. Both constitute interlocutory appeals under 18 U.S.C. § 3161(h)(1)(E). 18 U.S.C.
13 § 3161(h)(1)(E) states:

14 (h) The following periods of delay shall be excluded ... in computing the time within which
15 the trial of any such offense must commence:

16 (1) Any period of delay resulting from other proceedings concerning the defendant, including
17 but not limited to-

18 (E) delay resulting from any interlocutory appeal

19 The United States Supreme Court has established that the periods of delay listed in §§
20 3161(h)(1)-(6) are automatically excluded from computation of the speedy trial time limit, regardless
21 of their length. *Henderson v. United States*, 476 U.S. 321, 106 S.Ct. 1871, 1875, 90 L.Ed.2d 299
22 (1986). The Court reasoned that because §§ 3161(h)(1)-(6) expressly exclude “any period of delay”
23 and § 3161(h)(7) is expressly limited to a “reasonable period of delay,” Congress did not intend to
24 subject the delays listed in §§ 3161(h)(1)-(6) to a reasonableness requirement. *Id.* at 1875. The court

1 cited § 3161(h)(1)(E), which excludes any delay due to interlocutory appeals as an example of a
2 provision not subject to a reasonableness standard. *Id.* As such, any delay due to an interlocutory
3 appeal is excluded from defendant's speedy trial clock.

4 THEREFORE, the United States respectfully requests the Court continue the Government's
5 Response Deadline in this matter and to reset the deadline to a date, which is convenient to this court,
6 as well as to toll time as appropriate, under the Speedy Trial Act.

7 DATED this 29th day of June, 2017.

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9 STEVEN MYHRE
Acting United States Attorney

10 /s/ Alexandra Michael

11 _____
ALEXANDRA MICHAEL
Assistant United States Attorney

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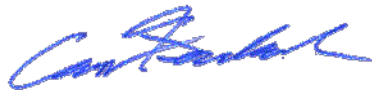
~~PROPOSED~~ ORDER

10 ORDER

11 After considering Government's motion to continue the Government's Response Deadline the
12 Court hereby finds good cause, and further finds that denial of the request would deny the result in a
13 miscarriage of justice and would deny the Government the opportunity to diligently prepare. For those
14 reasons, the ends of justice would best be served by a continuance of the Government's Response
15 Deadline.

16 Government's Motion to Continue is hereby GRANTED.

17 IT IS ORDERED that the Government's Response Deadline is re-set to the 13th day of
18 July _____, 2017.

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21
22 Cam Ferenbach
United States Magistrate Judge

23 June 29, 2017
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